

**SUPREME COURT MINUTES
WEDNESDAY, JUNE 4, 2003
LOS ANGELES, CALIFORNIA**

The Supreme Court of California reconvened in its courtroom in the Ronald Reagan State Office Building, Third Floor, South Tower, 300 South Spring Street, Los Angeles, California, on June 4, 2003, at 9:00 a.m.

Present: Chief Justice Ronald M. George, presiding, and Associate Justices Kennard, Baxter, Werdegarr, Chin, Brown and Moreno.

Officers present: Frederick K. Ohlrich, Clerk, and Gail Gray, Deputy Clerk.

**IN MEMORIAM
HONORABLE MARCUS M. KAUFMAN
June 19, 1929-March 26, 2003**

Justice Marcus Kaufman served as the 103d justice on the Supreme Court of California from March 1987 until his retirement in January 1990. Prior to his appointment to the Supreme Court, Justice Kaufman served for 17 years as an Associate Justice of the California Court of Appeal, Fourth Appellate District, Second Division. He attended the University of Southern California Law School, where he was editor-in-chief of the *Law Review*. He graduated in 1956, first in his class and Order of the Coif. From 1956-1957 he served as a law clerk to Roger J. Traynor, then as an Associate Justice of the California Supreme Court.

CHIEF JUSTICE GEORGE: Good morning. We meet today to honor Justice Marcus Kaufman, who served with great distinction as an associate justice of this court from March 1987 through January 1990. I would like to begin by introducing the members of the court. To my immediate right is Justice Kennard, and to her right is Justice Werdegarr, and then Justice Brown. At my far left is Justice Moreno, then Justice Chin, and then Justice Baxter. On behalf of the court, I wish to welcome Justice Kaufman's wife, Eileen, his children and grandchildren; and other family and friends.

Justice Kaufman's ascension to the Supreme Court in 1987 actually marked his return to this venue; from 1956 to 1957, as a new law school graduate, he served as a research attorney for then Associate Justice Roger Traynor. Subsequently, after serving as a member of the faculty of the University of

Southern California Law Center, he had a very distinguished career in private practice in San Bernardino. Although I never had the honor of serving with Justice Kaufman, I became acquainted with him through the opinions he authored both as a justice of the Court of Appeal and of the Supreme Court. During my years as a trial judge and appellate justice, I had frequent occasion to seek guidance from the opinions authored by Justice Kaufman, and in my present position I continue to find it a pleasure to encounter an opinion he has authored on an issue of interest. Justice Kaufman was rightfully viewed as a thoughtful and scholarly student of the law, always interested in carefully scrutinizing issues, precedent, and argument.

I have spoken to individuals who worked with Justice Kaufman on the Supreme Court, and they all mention that he was especially notable for his kindness and concern for staff. His encouragement and support extended not only to those who worked directly with him in his chambers, but equally to all employees of the court. They, in turn, remember his courtesies and interest with fondness and appreciation.

While on the Supreme Court, Justice Kaufman authored a number of majority opinions in landmark cases. He also produced several concurrences and dissents that effectively and clearly laid out his differences with the majority. Many of his opinions for both the Supreme Court and the Court of Appeal continue to guide and inform the bench and bar today and, I am confident, will continue to do so for many years.

Whether writing scholarly majority opinions, or concurrences, or deeply-felt dissents, Justice Kaufman's enthusiasm for and in-depth knowledge of the law and respect for the administration of justice were always evident.

After leaving the court, he continued to work of counsel in Southern California, maintaining his close involvement with the law and the legal profession. But his greatest connection was with his wife, Eileen, who was his constant companion and support during their more than 52 years of marriage. Although Justice Kaufman's contributions as a lawyer and as a judge were many, his warmth and commitment to family and kindness to staff and others will be equally remembered and appreciated for many years to come.

It is now my pleasure to introduce my colleague, the senior associate justice on the Supreme Court, Joyce Kennard, whose tenure on our court briefly coincided with Justice Kaufman's but whose friendship with him continued after his retirement from the court.

JUSTICE KENNARD: They say that true death is to be eternally forgotten. Never to be forgotten will be Justice Marcus Kaufman, who died on March 26 at the age of 73 after a long illness. His family and many friends will forever keep alive the cherished memories of this great jurist and wonderful man.

In 1987, after Marc had been on the Court of Appeal for 17 years, Governor George Deukmejian appointed him to the California Supreme Court, where I became his colleague in 1989. Marc retired in 1990.

In a sense, Marc's appointment to the state high court was a homecoming. Back in the mid 1950's Marc had been a law clerk, an annual to be more precise, to then Associate Justice Roger Traynor. In a recent tribute to Marc, Jo Larick, a former staff attorney of Marc's, recounted how much Marc loved the work on the court, and how sad he was to leave. But his devoted wife and number one fan, Eileen, told him she just knew that one day he would return to the court. She was right, of course.

Marc was a man of utter brilliance and integrity, dedicated to public service. He has been described as a man of passion and compassion. An apt characterization indeed. Marc was passionate about the law, and compassionate toward his fellow human beings.

Former staffers fondly remember their beloved Justice Kaufman. Invariably they talk about his thoughtfulness and his loyalty. Beverly Gong, his former and my current secretary, has described how, after he had announced his retirement from the state high court, Marc lobbied his successor, Justice Armand Arabian, to retain Marc's staff attorneys. When Justice Arabian said he would, Marc walked into Beverly's office and called his wife to tell her the good news. Beverly recalled that there were tears of relief on his face.

Earlier, Marc had lobbied me to fill a vacant chief-of-staff position with one of his attorneys, Terry Mead. I'm glad I listened to Marc. Bringing Terry on my staff, and later Beverly, were among the best decisions I have made in my career. Terry and Beverly have enriched my life. And for that I will always be grateful to Marc.

This past January, I had the pleasure of having Marc's grandson, Evan Granowitz, a student at U.C. Berkeley's Boalt Hall, join my staff as an intern.

Shortly after Evan came on board, I called Marc and Eileen to tell them how pleased my attorneys and I were with Evan's high intelligence, his dedication to the job at hand, his thoughtfulness, and his capacity for hard work, the same qualities so evident in his grandfather. I recall Marc's delighted chuckle when I told him that my attorneys affectionately referred to Evan as "young Marcus." That was to be the last conversation I had with Marc.

As his colleague on the court, I had the highest respect and admiration for Marc. I just adored him. Invariably, my December holiday cards to Marc and Eileen after Marc's retirement would have this P.S.: "Marc, I still miss you." Today, I would add: "I always will."

In facing death, Marc told his family that one can live on after death. This is what he wrote down: "Ideas, values and ideals do not perish with the mind that conceived them or the life that exemplified them. They live on and play a part in the lives of those to whom they have been transmitted. And so people live on after death in the ideas, values and ideals they transmitted during their lives, which often continue to grow and spread even after death." Those ideas, he said, need not be monumental. They can be such worthwhile concepts as "an appreciation of beauty, love of family, a recognition or fulfillment of duty or loyalty, a love of excellence, or an admiration of and appreciation for achievement."

Marc is gone, but his legacy lives on.

CHIEF JUSTICE GEORGE: Thank you very much, Justice Kennard. It is now my pleasure to introduce Mr. Guy Kornblum, a legal practitioner in San Francisco who co-authored with Justice Kaufman the work *California Practice Guide: Bad Faith* (Rutter Group 1986).

GUY O. KORNBLUM, ESQ.: May it please the court.

Thank you for this opportunity to be a part of this special tribute today to my friend and your colleague, Associate Justice Marcus M. Kaufman.

It is reasonably easy to be impressed with someone who graduates No. 1 in his law school class. It is also easy to be impressed when one is introduced to an appellate judge. That is all I knew about Marc Kaufman when I was first introduced to him by Bill Rutter of the Rutter Group in the very early 1980's.

Then a Court of Appeal Justice, Marc was to be a co-author with Harvey Levine and myself on the first insurance bad faith book concentrating on California law.

It did not take me very long to realize how fortunate I was that Bill Rutter – whom I had known since the mid 1960's – had given me the opportunity to not only meet, but work with and become a friend of Marc Kaufman.

Most of us who knew him know a good bit about his background and his accomplishments. We know his reputation – well deserved – for being a tough appellate court judge with his booming voice insisting that his poignant questions be answered directly, without deviation or hesitation. Get to the point!

We also know about his perceived “schizophrenic” judicial philosophy – tough on crime, but a bit more liberal when it came to protecting individual rights and civil remedies for California citizens.

But there is much more. Marc was a stickler for preparation. Before each of the Rutter Group “bad faith” seminars, he would pore over his notes. Here was as knowledgeable a judge as you could find on tort and insurance law, and yet he was continually working over his presentation to make sure he had it right.

Afterwards, those attending would come to the podium and ask questions. They always went to Marc first. He did not leave until he had talked to them all. This tough, stern-voiced appellate justice was so approachable and patient with their inquiries – so desirous of helping his colleagues at the bar learn what they came to learn.

We had some wonderful times traveling – enjoying the professional camaraderie that developed, which later developed into social occasions which my wife, Victoria, and I so enjoyed. As time passed, and we got busier, they became fewer. At one point I had hoped that Justice Kaufman, after his retirement in early 1990, would join my firm. But, frankly, he went elsewhere, to be closer to home and enjoy the support of a large firm. That was the right decision, indeed, and he enjoyed his years as a consultant and adviser on important questions of law and public policy. We remained in contact as he consulted with some of my clients during that time.

For me, his opinion in *Fletcher v. Western National Life Ins. Co.*, in 1970, while on the Fourth District Court of Appeal was an insightful view of what was to come from this honorable court in *Gruenberg v. Aetna Ins. Co.* in 1973 and then *Silberg v. California Life Ins. Co.*, in 1974, when the court embraced the essential concepts of insurance bad faith as a tort remedy in California.

Marc's brilliance has been often recognized. His allegiance to the highest professional standards was an example for all of us. His devotion to family while maintaining a dedication to his career, was admirable.

But more important during my 20 years or so of being a colleague – and I hope I can assume that role – is Marc's personal values. He was just a delightful human being, warm, sensitive, engaging, intimate. When you were with Marc he cared about you, asked about you and your family, and wanted to make sure that you were alright, that your wife was well and your children on course. He was genuinely happy when you reported good things about your family.

When I was first friends with Marc, my children were little. He always wanted to know about them. I was so impressed that a man of his eminence would care so much about others.

When one worked with Marc, as Harvey and I did along with Bill Rutter, it was constant learning. He kept poking at our ideas, questioning if we really knew what we were talking about. No one was offended. He was right on course. It was Marc who helped us develop the three-tier analytical framework for insurance bad faith cases that is still part of the Rutter book's presentation. He helped us hone and fashion concepts, with his insistence on adhering to basic legal principles while trying to refine new ideas and legal theories. He just made us figure out things the way they needed to be figured out – to get it right.

I have to laugh when I hear Marc referred to as the "intelligent redneck," or words to that effect. I never saw him that way. He was loyal to views that were well known. If you started a "discussion" to test those views, he was ready, willing and most able to stick you right against the wall, but always in the most diplomatic and friendly way. But you better stick to your guns in those discussions; don't back down. That was not how to earn any respect from him.

Marc Kaufman. Loved and admired – you bet. Respected and, in a sense, feared as an intellectual sparring partner, you bet. Friend and confidant, and adviser – there could be no better one than Marc Kaufman.

Your Honors, it is indeed my privilege to participate today in this tribute to Associate Justice Marcus M. Kaufman in this special ceremony.

To Eileen, Evan and Marc's family, I know you cherish the memories – and what wonderful ones they must be. May those memories remain with all of us of a great and dear man. We have all been blessed with his presence on this earth and in our lives.

CHIEF JUSTICE GEORGE: Thank you very much, Mr. Kornblum. I now would like to introduce Mr. Evan Granowitz who, as noted by Justice Kennard, is a grandson of Justice Kaufman and a law student, and who recently completed a term as an extern on Justice Kennard's staff.

MR. EVAN GRANOWITZ: May it please the court:

Honorable Chief Justice and Associate Justices of the court, and friends:

It is truly an honor to speak today on behalf of the Kaufman family. First of all, on behalf of my family, I would like to express our condolences to the family of Justice Eagleson on his recent death.

Thank you for this tribute to your colleague, my grandfather, Justice Marcus Kaufman. We are especially grateful to Justice Joyce Kennard and Guy Kornblum for sharing some of their cherished memories of my grandfather.

Serving among you and your predecessors as an associate justice of the California Supreme Court was the fulfillment of my grandfather's lifetime aspiration. "Justice, and only justice, shall you pursue," were the watchwords of his life. We are deeply grateful for the opportunity he was afforded to contribute to the development of the laws of this great state. More than anything else, he was grateful for the honor and recognition bestowed upon him for simply doing that which he knew he was put on this earth to do. We trust that his legacy will continue to provide inspiration to others in the years to come.

On behalf of my grandmother, Eileen, and the other members of our family, let me thank the members of the court and court staff for your kindness and support throughout the years and especially during these past months. We are

comforted to know that my grandfather's death cannot diminish the important ways he impacted our lives, the lessons he taught us, and the principles he stood for. They continue as *our* legacy-- for which we are blessed. As he wrote so eloquently in his ethical will, "a person's life... is measured in terms of the ideas, values and ideals transmitted by words or examples to family, friends, community and perhaps the world. These do not perish with the mind that conceived them or the life that exemplified them. They live on and play a part in the lives of those to whom they have been transmitted."

Although Marcus Kaufman may be remembered by the legal community as a scholar, an independent thinker, and a mentor to many; to my sister, my cousins and me, he was our adored "Zaidi." His love for us knew no boundaries. He was dedicated to his work, but dedicated even more to his family. No matter what pressing opinion he had to write, or function he had to attend, he always made time to spend with family.

He encouraged us to be worthy individuals, to develop our talents and interests, and to share our special gifts with others in meaningful ways. The inscription on the watch given to me upon my graduation from college says it so concisely, "Be worthy."

Coming from humble beginnings, his professional successes never changed him as a person, and he remained true to certain cherished values throughout his life.

Personal recognition was not important, except as it could serve to further more noble purposes. He instilled in us the ideals which were most important to him: appreciation of nature's beauty, love of family, the importance of duty and loyalty, love of excellence, and appreciation for achievement. He fiercely believed in the absolute responsibility to help the less fortunate, and sought out ways to assist others, no matter what their station in life.

He strived to exemplify in his life, in his own words, "a love affair with excellence, the pursuit of perfection, an obligation to develop one's abilities, and to achieve to the fullest of one's capacity." But these values left him with little time or patience for what he called "mediocrity or stupidity, especially when repeated."

My sister and I have always recognized how privileged we were to have such a great man as a grandfather. But we were especially fortunate to have inherited his passion and calling to the law.

Over the last few months of his life, we had many conversations about the law, which inevitably led to more lessons about life, some of which I am sure will not be apparent until years in the future. But above all else he stressed to me the importance of knowing myself and constantly reevaluating and improving myself. It is through this type of self-knowledge that one lives a meaningful life.

Thank you again for this final tribute to Marcus Kaufman. Although he is no longer with us in the flesh, I know that he lives on in those that knew and loved him. The passion for justice and devotion to the law that guided his life will continue to burn brightly in the hearts of those whose lives he touched.

Thank you.

CHIEF JUSTICE GEORGE: Thank you very much, Mr. Granowitz.

I want to express my appreciation again to all those who contributed their special and memorable remarks to this morning's memorial session.

In accordance with our custom, it is ordered that the proceedings at this memorial session be spread in full upon the minutes of the Supreme Court and published in the Official Reports of the opinions of this court, and that a copy of these proceedings be sent to Justice Kaufman's family.

S107266 The People, Plaintiff and Respondent
 v.
 Robert Williams, Defendant and Appellant
 Cause called. Gerald J. Miller argued for Appellant.
 Felicity Senoski, Deputy Attorney General, argued for
Respondent.
 Mr. Miller replied.
 Cause submitted.

- S105735 Olivia Kahn, a Minor, etc., Plaintiff and Appellant
 v.
 East Side Union High School District, et al., Defendant and
 Respondents.
 Cause called. Patrick R. McMahon opened argument for
 Appellant.
 Sharon J. Arkin, appearing for Amicus Curiae California
 Consumer Attorneys of California, continued argument for
 Appellant.
 Joseph Collins, appearing for Amicus Curiae California Ski
 Industry Association, opened argument for Respondent.
 Mark E. Davis continued argument for Respondent.
 Mr. McMahon replied.
 Cause submitted.
- S107167 The People, Plaintiff and Respondent
 v.
 Alejandro P. Gonzalez, et al., Defendant and Appellants
 Cause called. Marilyn L. George, Deputy Attorney General,
 argued for Respondent.
 Deborah Hawkins argued for Appellant Pano.
 Harvey Goldhammer argued for Appellant Gonzalez.
 Ms. George replied.
 Cause submitted.
- Court recessed until 1:30 p.m. this date.
- Court reconvened pursuant to recess.
Members of the Court and Officers present as first shown.
- S106503 Jarrow Formulas, Inc., Plaintiff and Appellant
 v.
 Sandra Hogan Lamarche, et al., Defendants and Appellants
 Cause called. Neal T. Wiener argued for Plaintiff/Appellant.
 Edith R. Matthai argued for Defendants/Appellants.
 Mr. Wiener replied.
 Cause submitted.

S035769 The People, Respondent

v.

James Matthew Heard, Appellant

Cause called. Jonathan Milberg argued for Appellant.

Susan Sullivan Pithey, Deputy Attorney General, argued for
Respondent.

Mr. Milberg replied.

Cause submitted.

Court adjourned.

S116247B166196 Second Appellate District,
Division One

I. (ROGELIO), IN RE

Petition for review and application for stay denied

S016883

PEOPLE v. MASTERS (JARVIS)

Extension of time granted

to July 22, 2003 to file appellant's reply brief. The court anticipates that after that date, only one further extension totaling 60 additional days will be granted. Counsel is ordered to inform his or her assisting attorney or entity, if any, and any assisting attorney or entity of any separate counsel of record, of this schedule, and to take all steps necessary to meet it.

S023421

PEOPLE v. BUNYARD (JERRY T.)

Extension of time granted

to August 4, 2003 to file appellant's opening brief. The court anticipates that after that date only, one further extension totaling 60 additional days will be granted. Counsel is ordered to inform his or her assisting attorney or entity, if any, and any assisting attorney or entity of any separate counsel of record, of this schedule, and to take all steps necessary to meet it.

S036864

PEOPLE v. GUERRA (JOSE F.)

Extension of time granted

to August 5, 2003 to file respondent's brief.

S041008

PEOPLE v. HOYOS (JAIME A.)

Extension of time granted

to July 28, 2003 to file appellant's opening brief. After that date, only one further extension totaling 30 additional days is contemplated. Extension is granted based upon counsel Lisa R. Short's representation that she anticipates filing that brief by 8/28/2003.

S042224

PEOPLE v. CRUZ (THOMAS V.)
Extension of time granted

to August 1, 2003 to file respondent's brief.
Extension is granted based upon Deputy
Attorney General Ross C. Moody's
representation that he anticipates filing that
brief by 8/1/2003. After that date, no further
extension will be granted.

S045184

PEOPLE v. BONILLA (STEVEN W.)
Extension of time granted

to August 1, 2003 to file respondent's brief.
The court anticipates that after that date, only
three further extensions totaling about 150
additional days will be granted.

S046816

PEOPLE v. THORNTON (MARK S.)
Extension of time granted

to August 5, 2003 to file appellant's opening
brief. After that date, only one further
extension totaling about 70 additional days is
contemplated. Extension is granted based
upon counsel Paul J. Spiegelman's
representation that he anticipates filing that
brief. by 10/15/2003.

S074429

PEOPLE v. QUARTERMAIN (DRAX)
Extension of time granted

to August 5, 2003 to file appellant's reply
brief.

S104589

LUCERO (PHILLIP L.) ON H.C.
Extension of time granted

to June 24, 2003 to file the reply to the
informal response to the petition for writ of
habeas corpus. Extension is granted based
upon Deputy Federal Public Defender Mark
R. Drozdowski's representation that he
anticipates filing that document by 6/24/2003.
After that date, no further extension will be
granted.

S112943

TIPTON-WHITTINGHAM v. CITY OF LOS ANGELES and L.A. POLICE PROTECTIVE
Extension of time granted

On application of plaintiffs and appellants and good cause appearing, it is ordered that the time to serve and file their Answer Brief on the Merits is extended to and including July 8, 2003.

S114708

PRIETO (ALFREDO) ON H.C.
Extension of time granted

to July 7, 2003 to file the informal response to the petition for writ of habeas corpus. After that date, only two further extensions totaling 60 additional days are contemplated. Extension is granted based upon Deputy Attorney General Bradley A. Weinreb's representation that he anticipates filing that document by 9/5/2003.

S115428

KELLY (HORACE) ON H.C.
Extension of time granted

to July 2, 2003 to file the informal response to the petition for writ of habeas corpus. After that date, only three further extensions totaling about 90 additional days are contemplated. Extension is granted based upon Deputy Attorney General Sara Gros-Cloren's representation that she anticipates filing that document by 10/3/2003.

S115483

KELLY (HORACE EDWARDS) ON H.C.
Extension of time granted

to July 3, 2003 to file the informal response to the petition for writ of habeas corpus. After that date, only three further extensions totaling about 90 additional days are contemplated. Extension is granted based upon Deputy Attorney General Sara Gros-Cloren's representation that she anticipates filing that document by 10/3/2003.

S115559
A043591

MORRISON (JESSE) ON H.C.
Extension of time granted

to July 7, 2003 to file the informal response to the petition for writ of habeas corpus. After that date, only four further extensions totaling about 120 additional days will be granted. Extension is granted based upon Deputy Attorney General Juliet H. Swoboda's representation that she anticipates filing that document by 11/10/2003.

S036105

PEOPLE v. PRINCE (CLEOPHUS)
Order filed

granting appellant's "Request for Permission to File Oversized Appellant's Reply Brief."

S113480

MCNEAL ON DISCIPLINE
Order filed

The order on Discipline issued on May 8, 2003, is hereby vacated. The time limitations set forth in the California Rules of Court, rule 952, subdivision (a) will be deemed to commence as of the date of this order.